

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAY M. RINGGOLD,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

§

§

§

§

§

§

§

§

§

§

§

No. 324, 2011

Court Below—Superior Court
of the State of Delaware in
and for New Castle County

Cr. ID No. 1006015765

Submitted: December 22, 2011

Decided: March 20, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 20th day of March 2012, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response, it appears to the Court that:

(1) While executing a search warrant on June 18, 2010 in a drug investigation, Wilmington police detectives discovered a 9 mm semi-automatic handgun and holster in the basement of 2913 N. Washington Street, Wilmington, Delaware (hereinafter "residence"). From their prior surveillance of the residence, from identifying documents found in the storage box where the gun and holster were located, and from other evidence and observations, the police surmised that

the gun and holster belonged to the appellant, Jay M. Ringgold.¹ Ringgold was not present when the police executed the warrant.

(2) On August 2, 2010, Ringgold was indicted on one count of Possession of a Deadly Weapon by a Person Prohibited (hereinafter “PDWBPP”). Ringgold’s prior conviction for Aggravated Menacing, a class E felony, was used as the basis for the PDWBPP charge.

(3) Ringgold was tried before a Superior Court judge on March 9, 2011. At the conclusion of the bench trial, the Superior Court convicted Ringgold of PDWBPP. On June 3, 2011, the Superior Court declared Ringgold a habitual offender and sentenced him to eight years minimum mandatory at Level V. This is Ringgold’s direct appeal.

(4) On appeal, Ringgold’s appellate counsel (“Counsel”)² has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) (“Rule 26(c)”)³. Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues.⁴ Ringgold, through Counsel, has

¹ For instance, the record reflects that Ringgold’s driver’s license listed 2913 N. Washington Street as his residence, that his personal possessions were found in an upstairs bedroom, and that he provided police with the address as his residence when he was arrested on July 13, 2010.

² Ringgold was represented by different counsel at trial.

³ See Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).

⁴ *Id.*

submitted several issues for the Court’s consideration.⁵ The State has responded to Ringgold’s issues and has moved to affirm the Superior Court’s judgment.⁶

(5) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), this Court must be satisfied that Counsel has made a conscientious examination of the record and the law for arguable claims.⁷ The Court must also conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.⁸

(6) On appeal, Ringgold raises several allegations of ineffective assistance of counsel. Chief among them is Ringgold’s claim that his trial counsel “never filed for [a] suppression hearing.” According to Ringgold, the police “obtained a search warrant with no real alleged confidential informant, no drugs, no marked money, no wiretaps, no video, [and] no confirmed surveillance. They also never provided us with a copy of the application for search warrant. . . . [The] police didn’t provide probable cause to justify search.”

(7) It is well-settled that this Court will not entertain an ineffective assistance of counsel claim that is raised for the first time on direct appeal.⁹ In this

⁵ *Id.*

⁶ *Id.*

⁷ *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

⁸ *Id.*

⁹ *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986).

case, because Ringgold's claims of ineffective assistance of trial counsel were not considered by the Superior Court, we decline to consider them in this appeal.

(8) In his other claims raised for the Court's consideration, Ringgold contends that: (i) the Superior Court erred when admitting evidence of his prior criminal history; (ii) his PDWBPP conviction, based on a non-drug related prior felony, was invalid; (iii) the Justice of the Peace Court did not have a sufficient basis to issue a search warrant; (iv) he was denied his right to confront his "alleged accuser" an "alleged confidential informant"; (v) he was denied his right to a speedy trial; (vi) the prosecution withheld exculpatory evidence, and (vii) he was promised that the PDWBPP charge would be dismissed. Ringgold also claims that the Superior Court erred when denying his motion for judgment of acquittal. With the exception of his insufficient evidence claim, the aforementioned claims were not raised in the Superior Court. Therefore, we have reviewed the claims for plain error.¹⁰

(9) The Court can discern no plain error from Ringgold's claim that the Superior Court erroneously admitted evidence of his prior criminal history and wrongfully convicted him of PDWBPP on the basis of an invalid prior conviction. When, as in this case, a prior felony conviction is an element of a charged

¹⁰ Del. Supr. Ct. R. 8.

offense,¹¹ evidence of the prior felony conviction is admissible.¹² Ringgold's Aggravated Menacing conviction, a class E felony, qualified as a predicate to the PDWBPP charge.¹³

(10) Next, Ringgold contends that there was no basis to issue a search warrant, and that he was denied his right to confront his "alleged accuser" an "alleged confidential informant."¹⁴ These claims in large part overlap with Ringgold's allegations of ineffective assistance of counsel. Therefore, in the absence of plain error on the face of the undeveloped record, we decline to consider the claims for the first time on direct appeal.

(11) Next, Ringgold argues that he was denied the right to a speedy trial. A speedy trial claim is not implicated on this record, however, when, on plain error review: (i) it appears that the length of time between indictment and trial, *i.e.*, less than eight months, was not presumptively prejudicial, (ii) the reason for the delay, *i.e.*, awaiting a DNA report, was valid, (iii) there is no indication that Ringgold ever asserted his right to a speedy trial, and (iv) there is no indication that he suffered any prejudice as a result of the delay.¹⁵

¹¹ See Del. Code Ann. tit. 11, § 1448(a)(1) (2007 & Supp. 2011) (providing that a person convicted of a felony is a person prohibited from possessing or controlling a deadly weapon).

¹² *Massey v. State*, 953 A.2d 210, 218 (Del. 2008).

¹³ Del. Code Ann. tit. 11, §§ 1448(a)(1), 602(b).

¹⁴ Apparently, a confidential informant provided information that was used by the police to establish probable cause for the search warrant.

¹⁵ See *Barker v. Wingo*, 407 U.S. 514, 530 (1972) (identifying four factors that courts should assess when determining whether the right to a speedy trial has been violated: (i) the length of

(12) Next, under *Brady v. Maryland*, Ringgold claims that the prosecution withheld exculpatory evidence, *i.e.*, evidence that the gun seized from his residence on June 18, 2010 had been stolen from its prior owner on November 14, 2009.¹⁶ On plain error review, the Court concludes that such evidence was neither material nor favorable to the defense.¹⁷ Therefore, Ringgold's claim to the contrary is without merit.

(13) Ringgold claims that the Superior Court erred when denying his motion for judgment of acquittal. This Court reviews *de novo* the Superior Court's denial of a motion for judgment of acquittal "to determine whether any rational trier of fact, after considering the evidence in the light most favorable to the prosecution, could have found the essential elements of the crime beyond a reasonable doubt."¹⁸ In this case, the record reflects that the Superior Court judge, acting as fact finder, properly determined on the basis of direct and circumstantial evidence that Ringgold, a person prohibited, had constructive possession of the gun because he had knowledge of the gun's location, an ability to put the gun under his control, and intent to possess or otherwise control the gun.¹⁹

the delay; (ii) the reason for the delay; (iii) the defendant's assertion of the right; and (iv) prejudice to the defendant).

¹⁶ *Brady v. Maryland*, 373 U.S. 83 (1963). A *Brady* violation occurs when a prosecutor fails to disclose favorable evidence that is material to either the guilt or punishment of the defendant.

¹⁷ *Id.*

¹⁸ *Birckhead v. State*, 2011 WL 2750935, at *1 (Del. Supr.) (quoting *Morgan v. State*, 922 A.2d 395, 400 (Del. 2007)).

¹⁹ See *LeCates v. State*, 987 A.2d 413, 426 (Del. 2009) (articulating State's burden in proving

(14) Finally, Ringgold claims that he was promised that the PDWBPP charge would be dismissed at a “last case review” on March 2, 2011. On plain error review, Ringgold’s claim is not supported in the record. The record reflects that Ringgold’s “final case review” was scheduled and took place on February 28, 2011.

(15) The Court has reviewed the record carefully and has concluded that Ringgold’s appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Ringgold could not raise a meritorious claim on direct appeal.

NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

constructive possession for PDWBPP). “[I]t is well established that circumstantial evidence may prove constructive possession.” *Id.*